**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

JANE DOE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 3:15-CV-05052-MDH**
	)	
BRANDON EGGLESTON, et al.,	)	
	)	
Defendants.	)	

ORDER

Before the Court is Plaintiffs' Motion for Attorneys' Fees and Expenses of Litigation. (Doc. 64). Defendants have filed their suggestions in opposition to the motion and the matter is now ripe for review.

BACKGROUND

The parties in this case filed cross motions for summary judgment presenting the Court with the question of whether Plaintiffs' right to religious freedom, as guaranteed by the Establishment Clause of the First Amendment, was infringed by the Joplin School District's relationship with Victory Ministries and Sports Complex. The Court found in favor of Plaintiffs and against Defendants and granted Plaintiffs' Motion for Summary Judgment. Plaintiffs now request attorneys' fees for their successful litigation of the case. The Court previously ordered that Defendants should pay Plaintiffs' costs and attorneys' fees, leaving solely the issue of the amount of fees and expenses to be determined by the Court. Plaintiffs now move the Court for an order awarding attorney fees and expenses in the amount of $211,281.45.

DISCUSSION

Here, the Court is presented with determining the amount of the attorneys' fee award. "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433–34, 103 S. Ct. 1933, 1939–40, 76 L. Ed. 2d 40 (1983). The "lodestar" method of determining a fee award "focuses on 'the significance of the overall relief obtained by the plaintiff in relation to the hours actually expended on the litigation.'" *Jensen v. Clarke*, 94 F.3d 1191, 1203 (8th Cir. 1996) (internal citation omitted). In addition, when determining hourly rates, "courts may draw on their own experience and knowledge of prevailing market rates." *Warnock v. Archer*, 397 F.3d 1024, 1027 (8th Cir. 2005) (internal citation omitted).

The Eighth Circuit has stated that the following factors should be used in setting the reasonable number of hours and reasonable hour rate components of the fee award formula: (1) the time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *McDonald v. Armontrout,* 860 F.2d 1456, 1459 (8th Cir. 1988) (internal citations omitted).

A. Hours Expended

Hours that are excessive, redundant or otherwise unnecessary are not to be included in an award of fees. *Hensley v. Eckerhart*, 461 U.S. at 434. Further, a court may reduce hours for duplication of work or inefficiency when more than one attorney is involved. *See A.J. by L.B. v. Kierst*, 56 F.3d 849, 864 (8th Cir. 1995).

Defendants argue Plaintiffs' request for 536 billable hours of work on this case is excessive. Defendants state this case did not contain uniquely complex or novel issues, consisted of only 3 depositions, and was resolved on cross motions for summary judgment. This Court agrees. The Court has reviewed the billing records submitted by the four attorneys who worked on this case and finds a reduction in the number of hours requested by the Plaintiffs in their motion is appropriate.

The Court finds the following types of entries to be redundant and inefficient in light of the litigation issues presented in this case: 1) intra office communications and conferences within law firms; 2) multiple entries for receiving and reviewing the same email or communication from co-counsel, opposing attorneys, clients or the court; 3) billings for research and writing in excess of 10 hours per day; 4) multiple attorneys reviewing and revising the same document; 5) hours billed on summary judgment that exceed the number that would be normal and customary.[1] The Court specifically notes Plaintiffs' counsel submitted an inordinate amount of time, approximately 386 hours, for summary judgment briefing alone.

B. Hourly Rates

Plaintiffs' counsel seeks fees based on hourly rates ranging from $315 an hour to $500 an hour. The Court, drawing on its own experience and knowledge of prevailing rates for attorney fees in the community, finds that the hourly rates of the attorneys is excessive. *See Warnock v.*

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[1] The Court has reduced the hours of the lowest compensated counsel of record were duplications were found.

Archer, 397 F.3d at 1027. The Court notes Plaintiffs' counsel has submitted documentation supporting each of their hourly rates. However, the Court has reviewed each attorneys' declaration and analyzed their credentials in light of similarly experienced attorneys who practice before this Court. Defendants contend that an appropriate hourly rate for this case falls between $250-$300/hour, and specifically that Miller should receive the lowest rate of $250.00.

In light of the experience of the attorneys, the rates of the markets in which the attorneys practice, and the local market for this Court, the Court has assigned a rate that is reflective of the factors before the Court and has reduced the hourly rate for each attorney as set forth below. The Court finds Plaintiffs' counsel is certainly experienced to handle the issues presented in this case, but finds no indication that the issues in the case presented complex, difficult or exceptional circumstances. Further, the case was resolved on summary judgment motions, and did not require any trial preparation or further trial work. The Court does not diminish the success of Plaintiffs' counsel, their knowledge and expertise in this area of law, or the work they have done in this case, but finds that a reduction in hourly rates is reasonable based on numerous factors.

C. Other Factors

In evaluating Plaintiffs' Motion for Attorneys' Fees the Court has also considered additional factors. First, while Plaintiffs prevailed in this matter, they did not prevail on all the issues presented and did not obtain the full scope of the relief they requested. In addition, the Court also considered that the Defendants had every opportunity to avoid this lawsuit. Defendants were put on notice far in advance of this litigation of the issues raised by Plaintiffs, but failed to proactively address or eliminate the problem with the consent and waiver form. The Court finds it unfortunate that in this case the taxpayers' dollars will be used to pay for the

Defendants' failure to identify and correct this legal issue without the cost and expense of litigation.

There is no precise rule or formula for making a determination of an attorneys' fees award. *Hensley v. Eckerhart*, 461 U.S. at 436. The Court "may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment." *Id.* at 436-37.

Wherefore, for the reasons set forth herein, the lodestar amounts determined by the Court in this case are as follows:

Arthur Benson	63 hours at $475/hour	$29,925
David Niose	45 hours at $400/hour	$18,000
Jamie Lansford	54 hours at $315/hour	$17,010
Monica Miller	275 hours at $300/hour	$82,500

The total amount for 437 hours is $147,435.

In addition, Plaintiff seeks expenses in the amount of $3,476.45. Defendants do not oppose this amount in their response and the Court finds this amount reasonable.

CONCLUSION

For the reasons set forth herein, the Court **GRANTS IN PART AND DENIES IN PART** Plaintiffs' Motion for Attorneys' Fees and Expenses. The Court hereby **ORDERS** that Plaintiffs shall be awarded attorneys' fees in the amount of $147,435.00 and expenses in the amount of $3,476.45.

IT IS SO ORDERED.

Date: May 25, 2017 */s/ Douglas Harpool*

DOUGLAS HARPOOL
United States District Judge